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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	)	IB Docket No. 96-111
	)	
and	)	
	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931
	)	
and	)	
	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	)	File No. ISP-92-007

REPLY COMMENTS
OF
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Summary

The recent comments in the latest round of this proceeding confirm that the commitments made by the United States in the recent World Trade Organization Basic Telecom Agreement leave intact the Commission's legitimate spectrum management policies and regulations, including those designed to preserve AMSC's access to the frequencies assigned to it by the Commission. Preserving access to spectrum for existing licensees is a policy goal that the Commission seeks in every radiofrequency service. It is designed for the fully legitimate and effective purpose of creating a rational, stable environment for the provision of service. This stability benefits licensees which, in the case of AMSC, risked hundreds of millions of dollars on the development of new technology and services. It also benefits consumers (many of whom also commit substantial resources to their own equipment), who as a result of such policies can be more confident that their service provider will have access to the spectrum needed to continue to provide service.

The policy of preserving incumbent access to secure spectrum does not distinguish between proposals by new entrants that are foreign and those that are domestic. Before any such proposal can be granted, the proponent must demonstrate that it will not interfere with the existing licensee's access to its assigned spectrum. In the case of the spectrum assigned to AMSC, the Commission has already recognized, and its finding remains valid, that there is not enough spectrum to license additional domestic systems and that the proposed use by foreign-licensed systems to provide service in the United States would destroy any prospects for the successful international frequency coordination that AMSC needs to access its assigned spectrum.

To the extent that the Commission does permit foreign-licensed systems to provide service in the United States, those systems should be subject to all the same policies and rules as

apply to domestic systems, including, in the case of any other Mobile Satellite Service systems in the same frequency band as AMSC, the requirements to provide priority and preemptive access for safety services and contribute to universal service support.

Contrary to the claims of some, the WTO Basic Telecom Agreement does not permit signatories of an Intergovernmental Organization ("IGO") such as Inmarsat to claim the benefits of the agreement in their use of IGO satellites just because the signatory itself is from a WTO-member country. IGOs are not covered by the agreement. Rather, signatory carriers benefit from the agreement only to the extent that they use satellites licensed by WTO-member countries.

AMSC continues to oppose TMI's contention that the Commission should deregulate the use of receive-only mobile terminals in the U.S. that communicate with foreign-licensed satellites. No one questions the Commission's jurisdiction over the operation of such terminals in the United States or that regulation of mobile terminals is a necessary vehicle for the Commission to establish its jurisdiction and one that is less restrictive than re-licensing foreign-licensed space segment. In light of, among other things, the impact that one-way paging operations by foreign-licensed systems in the U.S. would have on the international frequency coordination process, it is critical that the Commission have such a vehicle.

Finally, AMSC urges the Commission not to create a presumption in favor of the grant of requests to use foreign-licensed satellite systems. At least in AMSC's case, the grant of any proposal to operate a foreign-licensed system in its band in the United States would be a major change in existing Commission policy and a modification of AMSC's own license, either of which would require a compelling showing.

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REPLY COMMENTS OF AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC") hereby submits its reply comments in response to the Commission's *Further NPRM* in the above-referenced matter. The comments confirm that the commitments made by the United States in the recent World Trade Organization ("WTO") Basic Telecom Agreement leave intact the Commission's legitimate spectrum management policies and regulations. Such policies are consistent with national treatment and are necessary for a stable regulatory environment.

Background

In its comments, AMSC discussed the continuing importance of the Commission maintaining its discretion over matters of spectrum management, as consistently proposed by the

Commission throughout this proceeding. Many of the parties submitting comments agree with the Commission and AMSC that valid spectrum management policies are not affected by the WTO Basic Telecom Agreement.[1/] The only parties that appear to argue to the contrary are TMI Communications and Company, Limited Partnership ("TMI"), Comsat Corporation ("Comsat"), and BT North America Inc. ("BTNA").

TMI argues that there should be a presumption that "no spectrum issues need to be reviewed for access to non-U.S. mobile satellites which have completed the international coordination process." Supplemental Comments of TMI ("TMI Comments") at 4. In TMI's view, the Commmission's only legitimate concern in the post-WTO Basic Telecom Agreement world relates to interference. TMI contends that all interference issues have been resolved in the case of its L-band MSS system, because in its view: (i) the MSS L-band coordination is complete and (ii) permitting TMI's satellite to provide service in the U.S. would not have any impact on the spectrum coordinated for use by AMSC and "need not" have any impact on future multilateral coordination. TMI Comments at 6, n.13.

TMI objects to being required to comply with those FCC rules that, in its view, constitute a barrier to TMI's market access. *Id.* at 4, n.8. TMI seeks confirmation that the only technical rules that the FCC would impose on its system are those found in Part 25, subparts C and D. *Id.* at 7-8. TMI specifically objects to any application to it of the Commission's rule banning "exclusionary agreements," contending that it is unreasonably vague and unlikely to promote

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1/ Comments of the Secretary of Defense at 3; Comments of GE American Communications, Inc. ("GE Comments") at 9; Comments of Hughes Electronics Corp. ("Hughes Comments") at 10-11; Comments of Lockheed Martin Corp. ("Lockheed Comments") at 6; Comments of PanAmSat Corp. ("PanAmSat Comments") at 3.

competition. TMI also continues to object to any requirement for permission to operate receive-only mobile terminals, on the grounds that any such regulation is inconsistent with "national treatment" obligations under the WTO Basic Telecom Agreement.

Comsat, which continues to argue that it should be permitted to use Inmarsat space segment operating in the MSS L-band to provide expanded mobile services in the U.S., focuses its argument on the alleged benefits to competition that it claims would result from such authorization. Comsat claims that its provision of domestic service would offer users a choice between existing AMSC domestic services and Comsat's global services. Comsat Comments at 16.[2/] Comsat (like TMI) challenges the Commission's discretion to maintain its spectrum management policies by any process other than the international frequency coordination process. *Id.* at 20-21. Comsat and BTNA (which repeats its arguments from the earlier round of this proceeding in favor of using Inmarsat to provide expanded aeronautical service in the U.S.) also argue that their requests to use Inmarsat should be treated the same as any request to use a satellite licensed by a WTO-member country, despite the fact that Inmarsat's satellite system is not covered by the WTO Basic Telecom Agreement.

2/ At the same time, Comsat tries to argue that any competition that it provides would be minimal, since, according to Comsat, the AMSC satellite provides eight times more capacity than an Inmarsat satellite, *i.e.*, eight times more L-band power (57 dBW versus 48 dBW), and AMSC generally charges lower prices. Comsat cannot have it both ways; if it believes that it has an inferior service, then it should not be pressing so hard to gain entry to the U.S. market. AMSC believes that, regardless of the relative merits of its own services and those of Comsat, the potential for use of Inmarsat to serve the domestic land-mobile market will wreak havoc on the already difficult international frequency coordination process. Moreover, as AMSC has noted elsewhere, Comsat can always provide service in the United States by using AMSC's space segment.

Discussion

Spectrum availability. The comments of TMI, Comsat, and BTNA highlight the extent to which parties will attempt to misuse the WTO Basic Telecom Agreement to overturn the Commission's longstanding spectrum policy in the MSS L-band.[3/] That policy is based on a fundamental aspect of the Commission's spectrum management jurisdiction, *i.e.*, the determination of how much spectrum is required to provide a given service and how many licenses can be accommodated in that spectrum. The Commission makes these kinds of decisions regularly for virtually every service that uses radiofrequency spectrum. In the case of an MSS system, the Commission decided that the system should be assigned 28 MHz of spectrum as part of its license, for the full ten-year term.[4/]

The Commission has also found that the band in which it licensed AMSC is congested, the international frequency coordination is difficult, all the existing applicants had to form a single consortium, and it is necessary to exclude foreign systems from operating in the U.S. in

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[3/] Second Report and Order, 2 FCC Rcd 485, 486 (1987) ("Second Report and Order"), clarified, 2 FCC Rcd 2417 (1987), *recon. denied*, 4 FCC Rcd 6029 (1989), *rev'd and remanded on other grounds sub nom.*, Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991), Tentative Decision on Remand, 6 FCC Rcd 4900 (1991), Final Decision on Remand, 7 FCC Rcd 266 (1992), *aff'd sub nom.*, Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

[4/] AMSC does not need 28 MHz in the early years of its operation, but it continues to expect that the gradual growth of demand for its services will require access to substantial amounts of spectrum over the life of its first-generation system and the term of its license. Inmarsat's experience here is instructive. While its service began nearly twenty years ago with very few customers and grew slowly at first, it has recently succeeded in building substantial customer demand for its services.

order to improve AMSC's chances of securing access to its licensed spectrum.[5/] At the same time, the Commission also has proposed that, should AMSC gain access through coordination to its full complement of assigned spectrum, the Commission would consider permitting additional MSS systems to operate using the other spectrum in the band. *Id.* at para. 16. Presumably, such additional systems could include foreign-licensed systems.

There are several false premises to the arguments that are being made by TMI, Comsat, and BTNA. The most pernicious is that AMSC no longer has any difficulty accessing the spectrum that the Commission has assigned to it, *i.e.*, that the international frequency coordination process has been successfully concluded. In fact, all that has been concluded is a one-year sharing arrangement that will need to be renegotiated next year. Moreover, the demands for spectrum that continue to be made, by TMI and Inmarsat as well as all other participants (including Russia and Mexico), indicate that the MSS L-band will become even more congested in the years to come, as existing systems grow and new foreign-licensed systems are likely to be proposed. For 1998, AMSC has access to only approximately 7 MHz of spectrum in the MSS L-band, roughly half of what the Commission assigned to it. All of the rest of the spectrum is at least temporarily divided among the other systems. Reaching even this temporary arrangement was extremely contentious and, absent a significant change in the

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5/ Second Report and Order, paras. 4-10; Tentative Decision, 6 FCC Rcd 4900, 4907; In the Matter of Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band ("Lower L-band NPRM"), IB Docket No. 96-132, para. 9 (June 18, 1996).

AMSC understands that both Canada and Mexico have similar policies restricting the use of foreign-licensed systems, for the same reason as that of the Commission: to improve the domestic licensee's chances of securing sufficient spectrum in coordination.

dynamic of this process, reaching an arrangement for 1999 and subsequent years will be more so.

TMI argues that opening the U.S. market to its system and, presumably, others operating in the MSS L-band, would have no impact on the coordination process and AMSC's ability to negotiate for access to sufficient spectrum. This claim is totally unsupported and unsupportable.[6/] All hopes for a successful coordination process would be shattered if TMI and other participants are able to project spectrum needs that include access to the U.S. market. As long as such spectrum congestion persists in the band, there will be a clear "cause and effect" between opening the U.S. market and reducing AMSC's access to spectrum, an effect that would undercut the Commission's spectrum management policies as clearly as a decision to permit the operation of a second cellular system on the A block in Washington, D.C. Such a result is not mandated or intended by the WTO Basic Telecom Agreement.

TMI claims that its intent is to use only its own, already coordinated spectrum for service in the United States. Comments of TMI at pp. 5-6. That is impossible. The amount of spectrum that TMI has access to under the present coordination arrangement is more than it can justify on the basis of its present needs. (If this were not the case, TMI could not logically make the argument that it does not need additional spectrum to serve the United States.) Thus, in a practical sense, this is spectrum to which AMSC and others expect that they may be able to gain access as their systems develop. The demand for spectrum in the MSS L-band (in some cases

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6/ At a minimum, TMI is remarkably cavalier in arguing that the MSS L-band coordination has been successfully concluded. As an active participant in the coordination, TMI knows full well the precarious and temporary nature of the present arrangement. Viewed less charitably, TMI's characterization of the status of the MSS L-band coordination can be seen as the kind of misrepresentation of material facts that calls into question its qualification to become a Commission licensee.

real demand and in other cases perceived demand), is simply too great for TMI or any of the other parties to the coordination to claim that they can use "already coordinated" spectrum to provide service to the U.S. market without having an adverse impact on AMSC's own ability to gain access to its full complement of spectrum.

In some cases in which a foreign-licensed system has been coordinated internationally, particularly those involving geostationary Fixed Satellite Service ("FSS") systems, it may be accurate to say that a coordination process is "concluded" and that the Commission has few if any spectrum management issues to consider when there is a proposal to use the foreign-licensed system to provide service in the United States. *See* Comments of Telesat. In the case of geostationary FSS systems, it is reasonable to expect coordination to provide stable access to spectrum indefinitely. In the case of the MSS L-band, however, international coordination is far different.[7/] Due to the extreme congestion in the band and the impracticality of such sharing techniques as two degree spacing, at least for the time being there are only at best annual arrangements. The most that can be said of the present situation is that the parties have reached a short-term arrangement and have agreed to continue annual discussions with the hope of reaching additional short-term arrangements.

AMSC also disagrees with TMI's apparently very narrow definition of the kind of harmful interference about which the Commission may be properly concerned. The Commission's decision not to permit additional systems to operate in the band is designed to promote successful international frequency coordination and prevent harmful interference among

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7/ As the Commission found in its lower L-band NPRM, "[n]ever before have we been unable to secure sufficient spectrum to support a satellite system that already has been licensed, partly constructed, and launched. Lower L-band NPRM, para. 10.

all existing and proposed systems. This restriction is applied not because these systems are foreign, but because they are additional systems.

TMI and Comsat attempt to cast the issue of market access as limited to issues of promoting competition. Comments of TMI at pp. 6-7; Comments of Comsat at pp. 15-19. These arguments ignore the extent to which AMSC already faces substantial competition from other existing and soon-to-be operational satellite systems and from terrestrial systems, but of greater importance, they ignore the more fundamental importance of protecting an existing licensee's access to its assigned spectrum. What good is the prospect of competition if at least one of the competitors loses any certainty that it will have access to the spectrum that was assigned to it that it needs to operate its system? Moreover, if promoting competition were the only Commission goal, then no licensee's access to spectrum would ever be assured, since more competition is always theoretically possible by licensing additional entities to use the same spectrum. Taken to its logical extreme, such an emphasis on competition for its own sake displaces any meaningful effort at spectrum management.

Compliance with other requirements. Putting aside the issue of the Commission's authority to determine how many systems may operate in a frequency band, AMSC disagrees with TMI's contention that the Commission may not require foreign-licensed systems to comply with domestic regulations if the foreign-licensed system is unwilling or unable to do so. According to TMI, such regulations amount to a "*de facto* barrier" to market access. However they are characterized, they do not violate the U.S. commitment to national treatment, since they impose the same requirements on all entities that provide service in the United States. The purpose of the WTO Basic Telecom Agreement is to foster a level playing field among

international competitors, not to provide foreign entities with an unfair advantage over their domestic counterparts.

TMI asks the Commission to clarify what regulations it would be subject to if it were to provide service in the United States, and states that it understands that such rules would be limited to Part 25, subparts C and D. AMSC disagrees that the requirements are limited so narrowly. In addition to the rules TMI cites, TMI and other systems should be required to comply with all Commission policies, rules, and orders that are relevant to AMSC as a U.S. service provider, including requirements for the provision of priority and preemptive access to certain safety services and for the provision of relay services for the deaf; restrictions on the operation of half-duplex terminals[8/] and on out-of-band emission limits; and payments to support universal service, telecommunications services for the deaf, and appropriate regulatory fees.[9/]

Use of Inmarsat satellites. AMSC opposes the contentions of Comsat and BTNA that

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8/ AMSC's operation of half-duplex terminals is restricted at present, with only a temporary authorization and a limit on the number of such terminals that it may operate. *See, e.g.,* AMSC Subsidiary Corporation For Modification of its Blanket License to Construct and Operate 30,000 L-Band Mobile Earth Stations, 10 FCC Rcd 10458 (1995). If other systems were permitted to provide service in the United States, similar restrictions presumably would be required. It is unclear, however, that such restrictions could be imposed without further restricting AMSC's own operations and those of its customers. For instance, since half-duplex terminals are restricted to the lower L-band and no more than 33,000 half-duplex terminals may operate, if the Commission permits a new foreign-licensed system to operate, it presumably will be required to operate its own half-duplex terminals in the lower L-band and would have to share AMSC's allotment of 33,000 terminals. The same point applies to the present restriction of 200,000 full-duplex voice terminals. If that restriction is to make any sense, it would have to be viewed as an overall allotment for all systems providing service in the U.S. in the same band.

9/ Numerous parties emphasize the need for equity in the regulation of domestic and foreign licensees. Comments of Columbia Communications Corp. at 8-9; GE Comments at 9-12; Joint Comments of Loral Space & Communications Ltd. and L/Q Licensee, Inc. ("Loral Comments") at 20-32; PanAmSat Comments at 8-9.

the WTO Basic Telecom Agreement requires or supports the Commission's treatment of Inmarsat satellites as though they were licensed by a WTO-member country. Comments of BTNA at 3; Comsat Comments at 9-12. As a legal matter, the IGOs are outside the scope of the WTO Basic Telecom Agreement because their satellites are not licensed by any one country. Moreover, the Commission has quite properly recognized that the unique characteristics of these entities require special review of their potential impact on competition.

Nor is there any "loophole" from the fact that the proposed service would be provided by carriers, such as Comsat and BTNA, which are from WTO-member countries. The Commission's L-band spectrum management policy impacts Comsat and BTNA equally, a fact that belies any claim that the policy violates the U.S. commitment to national treatment. Moreover, as AMSC continually reminds Comsat and BTNA, they may provide MSS in the United States -- all they need to do is use AMSC's space segment.[10/] With a modest investment in a network earth station that communicates with AMSC's satellite, Comsat and BTNA may provide U.S. domestic service without any inconvenience to the customers they claim to be speaking for.

Regulation of receive-only terminals. AMSC opposes TMI's argument that the WTO Basic Telecom Agreement precludes the Commission from regulating the operation of receive-only terminals that communicate with foreign-licensed satellites. TMI argues that any such regulation would be inconsistent with national treatment, since the use of such terminals in connection with Commission-licensed satellite systems is not regulated. TMI Comments at 14.

10/ *See, e.g.,* AMSC Petition to Deny at 9 (July 12, 1996), FCC File No. 1281-DSE-P/L-96; AMSC Petition to Deny at 4 (February 27, 1997), FCC File No. 548-SSA-97(50).

This argument, however, overlooks the fact that such terminals would be regulated precisely because the foreign-licensed space segment that is involved is not being licensed by the Commission.[11/] TMI does not deny that the Commission has jurisdiction over the operation of satellite systems that provide either receive-only or transmit-receive service in the United States, or that it is appropriate to use regulation of user terminals rather than space segment as a reasonable way for the Commission to assert its jurisdiction in connection with transmit-receive mobile terminals. It is not apparent, therefore, how TMI can seriously object to the regulation of receive-only terminals. AMSC understands that TMI would like to be in the unique position, as a foreign-licensed entity, of being able to legally offer these services in the United States without any regulation, but such a proposition clearly violates U.S. sovereignty. No entity, domestic or foreign, is permitted to operate outside the Commission's jurisdiction.

Moreover, the operation of one-way paging services to terminals in the U.S. clearly has an impact on the Commission's spectrum management policies. As with two-way services, the provision by additional satellite systems of one-way paging services in the MSS L-band to U.S. customers will have an adverse impact on the international frequency coordination process, making it more difficult for the parties to reach sharing agreements that will give AMSC access to the frequencies that are the heart of its authorization and essential for its operation and continued service.

Licensing procedures. AMSC agrees with those who urge the Commission not to create any presumption that it is permissible to use a foreign-licensed satellite system. Comments of AT&T Corp. at 2; Loral Comments at 21-23. The WTO Basic Telecom Agreement does not

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11/ This point is made in several of the comments. *See, e.g.*, Hughes Comments at 22.

require the establishment of any such presumption, and it is contrary to the burden that the Commission normally establishes on applicants. Moreover, in the kinds of cases that AMSC envisions, in which such a request is effectively a request for the Commission to overturn its existing spectrum management policies and modify AMSC's license, the more reasonable approach would be to put a heavy burden on the proponent to establish grounds for such a reversal of Commission policy.

Conclusion

There is no denying the existence of a global trend towards liberalization of trade in telecommunications, as reflected in the WTO Basic Telecom Agreement. The U.S. stands to benefit from the liberalization trend, with the global export of telecom services by U.S. providers. That trend and the benefits to the U.S. economy, however, will continue only if countries continue to be comfortable that trade liberalization will not erode their legitimate sovereign rights with respect to spectrum management and the regulation of service providers. The Commission is in a unique position in this proceeding to clarify the boundaries between trade liberalization and sovereignty in a way that will promote further progress. AMSC urges the Commission, therefore, to adopt rules in this proceeding that support trade liberalization, but do not jeopardize traditional and legitimate policies for management of spectrum use in the public interest. By giving full weight to those sovereign rights, the Commission will send the right signal to other countries that trade liberalization is consistent with their interests.

Therefore, AMSC Subsidiary Corporation urges the Commission to adopt rules in this proceeding that are consistent with the above-stated recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elinor W. McCormick, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that a true copy of the foregoing **"REPLY COMMENTS OF AMSC SUBSDIARY CORPORATION"** was sent this 5th day of September, 1997, by first class United States Mail, postage prepaid, to the following:

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